HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE Ms. JUSTICE G. ROHINI

Writ Appeal No.887 of 2007

Between:

P.S.V. Sanjeeva Rao … Appellant

And

The State Bank of India,
represented by its Chief General Manager,
Local Head Office, Hyderabad. … Respondent

:: J U D G M E N T ::

Counsel for the appellant : Sri K.L.N. Rao
for Sri M. Kesava Rao

25th October, 2007

Per G.S. Singhvi, C.J.

Whether in exercise of the power vested in it under Rule 14(1) read with Rule 17(1) of State Bank of India Officers Service Rules (for short, 'the Rules'), the management of the State Bank of India could revise the policy of promotion and whether the appellant is entitled to be promoted to Junior Management Grade Scale-I (JMGS-I) de hors the revised policy are the questions which arise for a determination in this appeal filed by Sri P.V.S. Sanjeeva Rao against order dated 22-6-2007 passed by the learned Single Judge in Writ Petition No.17592 of 1998.

The appellant joined the service of the respondent bank as

Clerk/Cashier in the year 1977. After 11 years, he filed Writ Petition No.17592 of 1998 for quashing the revised promotion policy circulated vide letter No.LHO/CDO/PRR/5/98-99, dated 2-5-1998 by contending that as a result of enlargement of the zone of eligibility, his right to be considered for promotion to JMGS-I has been adversely affected. He also claimed that the respondent is bound to make promotion against 37 vacancies of 1995 by considering the candidature of only those employees who were eligible in terms of the un-revised policy.

In the counter filed by Sri A. Suryaranarayana, Assistant General Manager (PER & HRD), State Bank of India, Local Head Office, Hyderabad, reliance was placed on Rules 3(2), (3), 14 and 17 and it was averred that the policy circulated vide letter No.PER:IR:CIR:78, dated 16-9-1992 was amended keeping in view the request made by various Local Head Offices and All India State Bank of India Staff Federation. It was then averred that the policy was circulated after its approval by Executive Committee of the Central Board. Sri A. Suryaranarayana extracted the salient features of the revised policy and averred that as a result of enlargement of the zone of consideration, employees who had put in 15 years of service became eligible to appear in the written examination, but none of the legal or constitutional rights of the petitioner has been infringed.

The learned Single Judge held that the policy decision taken by the respondent to increase the number of candidates from 2 to 5 against each vacancy does not suffer from any legal infirmity because JMGS-I is a selection post to be filled by merit-cum-seniority and only those who are found meritorious among eligible candidates will be selected.

Sri K.L.N. Rao, learned counsel for the appellant, relied on the judgment of the Supreme Court in **Y.V. Rangaiah v. J. Sreenivasa Rao**[1] and argued that the revised policy circulated is not retrospective in nature and, therefore, the same cannot be applied to

the vacancies which became available prior to 2-5-1998. He further argued that the vacancies of 1995 are required to be filled as per the un-revised policy and the respondent committed grave illegality by not considering the appellant's candidature against those vacancies to the exclusion of those who became eligible in terms of the revised policy.

In our opinion, there is no merit in the argument of the learned counsel and the appeal is liable to be dismissed summarily. Rules 3(2), (3), 14(1) and 17(1) of the Rules, which have bearing on the decision of the appeal, read as under:

"3(2) The Central Board reserves the right of changing the rules here laid down from time to time.

Provided that every new rule or alteration in an existing rule shall take effect, unless otherwise directed by the Central Board, from the date on which the new rules or alteration is passed by it in a resolution.

3(3) When a new rule or alteration in an existing rule is passed by the Central Board, it shall be issued in the form of a circular.

14(1) All appointments in, and promotions to, the officers' grades shall be made by the competent authority in accordance with the policy or guidelines, if any, laid down in this behalf by the Central Board or the Executive Committee.

17(1) Promotions to all grades in the Bank shall be made in accordance with the policy laid down by the Central Board or the Executive Committee from time to time."

The extracts of letters dated 16-9-1992 and 2-5-1998, which too have bearing on the decision of the appeal, are reproduced below:

"**Letter dated 16-9-1992**

The policy with regard to promotion from clerical cadre to JMGS I through the normal channel and through the channel of appointment of Trainee Officers have been laid down in consultation with the All India State Bank of India Staff Federation. While the policy laid down a several years ago has undergone a few minor changes from time to time, a review of some of the major aspects of the policy has not taken place for quite some time.

2. With a view to modifying some of the provisions of the policy which run contrary to the present day requirements of the Bank and also restrict the fulfillment of the aspirations of the staff concerned, the matter was

discussed within the All India State Bank of India Staff Federation. The views of the Circular were also elicited with regard to promotion under the …..and examining the view of the Circles, the matter was placed before the Executive Committee of the Central Board at its meeting held on the 26th August, 1992, when the ECCB accorded approval in terms of Rule 17 of the SBI Officers' Service Rules, for bringing about the under-noted modifications/changes in the policy relating to the promotion under both the undermentioned channels. Copies of the memorandum dated 22nd August 1992 submitted to the ECCB and minutes of the bipartition discussions held with the representations of the staff federation at this office on the 3rd September 1992 are enclosed.

(1) Under Normal Channel:

(i) Number of employees to be called for written test;

Existing provision:

At present, the number of employees to be called for the written test is restricted to 3 times the number of vacancies.

Revised provision:

The number of employees to be called would henceforth be 5 times the number of vacancies, with a proviso that once an employee is called for the written test, he/she would continue to be called in the subsequent years also till he/she exhausts all the chances available to him/her, even if the latter exercise would lead to calling of employees in excess of 1:5 ratio.

ii) Number of vacancies available for appearing in the written test.

Existing provision

Three consecutive chances and a fourth and last chance to be availed of after a gap of three examinations from the date of availment of the third chance.

Revised provision:

The number of chances that would be available to an employee would stand increased to 5. All such chances with no gap between the availment of the penultimate and fifth and final chance."

"**Letter dated 2-5-1998**

As you are aware, the existing policy for promotion under the normal channel provides, inter alia, for calling candidates for the written test in the ratio of 5 for 1 vacancy. In view of the limited number of vacancies and the stipulated number of chances each candidate could take, the same set of candidates are being permitted to appear for the test, year after year. In most circles, the service range for becoming eligible to take the test continues to be 17/18 years, leading to dissatisfaction among employees, who aspire for promotion but continue to remain in the clerical cadre for want of requisite service/seniority.

2. Central Office has, therefore, constituted a committee last year to look into the entire gamut of career path for workmen of employees to appear for the promotion test from clerical to officers cadre so as to enlarge the basket of available candidates. The Committee is expected to submit its report in due course.

3. The All India State Bank of India Staff Federation has been requesting the Management to workout an interim arrangement. In the meantime, for this year's (1997-98) promotion exercise, providing for all the employees with a minimum service of 15 years being permitted to appear for the test for promotion to Junior Management Grade under the normal (seniority-cum-merit) channel.

4. It has accordingly been decided to modify the policy, as a one time measure, for promotion from clerical cadre to Junior Management Grade (normal channel) for the current year i.e. 1997-98, as under:

i) The present policy of limiting the number of candidates to 5 for 1 vacancy along with the provision for calling the repeaters until they exhaust all the permissible chances/become overaged will be continued for the current year.

ii) In the event of the present policy not resulting in lowering the service range for being eligible for promotion to 15 years, all the clerical cadre employees, putting in 15 years of total service as on the 1st August, 1997 and otherwise eligible for promotion will be allowed to appear for the test.

iii) In order to ensure that the ratio of the number of candidates to vacancies is not less than 5 to 1 against reserved vacancies, service requirement will be lowered for SC/ST candidates to the required extent, wherever necessary.

iv) Such of those employees who become eligible for promotion in terms of Clause (ii) above (having put in 15 years of service as on 1-8-1997) for the current year, shall not automatically be entitled to appear for the next year's test unless they become so eligible under the proposed new promotion policy.

Accordingly, it has been decided to hold a written test on the 17th May 1998 at all Module centres for promotion to officers cadre in Junior Management Grade Scale-I with effect from 1-8-1997 to fill up the vacancies representing 37 unfilled vacancies of 1995 and the vacancies sanctioned for 1996 and 1997 after taking into consideration the reservation of 15% for SC and 7.5% for ST candidates. The test will be conducted at the respective Zonal Office centres."

Admittedly, the revised policy contained in letter dated 2-5-1998 was circulated after the same was approved by Executive Committee

of the Central Board. Therefore, the same cannot be declared ultra vires the power of the respondent bank.

It is neither the pleaded case of the appellant nor the learned counsel argued that the policy contained in letter dated 2-5-1998 is violative of any constitutional or legal provision. Therefore, the only issue which requires consideration is whether the appellant has any vested right to be considered for promotion to JMGS-I in accordance with the un-revised policy, which was prevailing prior to 2-5-1998 and whether the revised policy can be operated qua the existing vacancies. In this context, it is apposite to mention that the right of equality in the matter of employment guaranteed under Article 16(1) of the Constitution of India is limited to the right of consideration and not the right to appointment by direct recruitment or by promotion. It is also settled law that in the absence of any statutory prohibition, the employer has absolute right to make, revise, amend and rescind the policy of promotion. The policy circulated in 1992 did not contemplate year wise determination of vacancies and consideration of the particular employees. Therefore, the mere fact that the appellant was eligible to be considered for promotion against the vacancies of 1995 cannot lead to an inference that implementation of the revised policy has resulted in violation of his legal or fundamental rights and we do not see any reason to strike down the revised policy on the spacious ground that more number of persons would become eligible to be considered for promotion to JMGS-I.

In **Dr. K. Ramulu v. Dr. S. Suryaprakash Rao**[2], the Supreme Court considered the question whether the government's failure to prepare panel for promotion to the post of Assistant Director in accordance with the Andhra Pradesh Animal Husbandry Service Special Rules, 1977 had resulted in violation of the respondent's right to equality and answered the same in negative. Their Lordships of the Supreme Court referred to the earlier judgments in **Y.V. Rangaiah**'s case (supra), **P. Ganeshwar Rao v. State of A.P.**[3], **P.**

Mahendran v. State of Karnataka[4], **A.A. Calton v. Director of Education**[5], **N.T. Devin Katti v. Katnataka Public Service Commission**[6] and **Ramesh Kumar Choudha v. State of M.P.,**[7] and held that the decision taken by the government not to make any appointment till the amendment of the rules does not suffer from any legal infirmity. Paragraphs 9 to 12 of the judgment, which contain the ratio of the law laid down by the Supreme Court, read as under:

"9. In para 8, this Court, considered the ratio in S**tate of Haryana v. Subhash Chander Marwah** wherein though the vacancies were existing and select list candidates were available, pursuant to the recommendation made by the High Court not to appoint any candidate who had secured less than 55% marks, the Government acted upon it and did not appoint the candidates in the waiting list. When they claimed their right to appointment, and the order was issued by the High Court for filling up all the vacancies from persons in the waiting list, this Court had laid that though the candidates were waiting in the list, they had no right to be appointed. It was held that the plea of arbitrariness does not arise since the Government have taken a decision not to appoint any of the persons who secured less than 55% of the marks. This Court also has pointed out in **Shankarsan Dash** case that when the Government have taken a conscious policy decision not to fill up the vacancies, the decision must be reasonable and not arbitrary. Since it was a policy decision it could not be interfered with. It was held that the vacancies for the Scheduled Tribe candidates were being filled up for the reason that vacancies reserved for them were not being filled up due to non-availability of the select candidates. The decision to fill up the vacancies reserved for Scheduled Tribe candidates was justified on the ground that non-filling up of the vacancies belonging to the general candidates cannot be characterized as arbitrary decision. It was observed that "the fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant. "Thus it could be seen that if the decision of the Government is supported by valid reasons, it cannot be stated that the decision taken by the Government as arbitrary.

10. This position was reiterated by this Court in **State of Bihar v. Md. Kalimuddin**. Therein, the Government of Bihar also have taken a decision to revise the policy of reservation and pending decision the appointment of the wait listed candidates were deferred. The High Court, however, approached the matter and gave direction thus (SCC p.11, para 8):

"The Panel thus does not appear to be violative of the reservation policy of the State. So far the proposed rules of recruitment are concerned, the details of which have not been furnished from which it could be gathered as to whether any substantial or drastic deviation is sought to be made from the existing rules regarding the procedure of recruitment except that training is no longer to be a necessary qualification or condition of eligibility I do not want to go into the correctness of the policy of the State dispensing with the necessity of the training as a condition of eligibility. However, I have serious doubt whether appointment of untrained teachers in preference to the trained ones who are already in panel and available for appointment can be said to be in public interest."

This Court further held thus (SCC p.11 para 8):

"The ultimate outcome of that exercise is not fully brought out on record but it is obvious that the State Government was not acting mala fide and merely with a view to denying appointment to the respondents herein. Merely because notwithstanding the availability of trained personnel the State Government was inclined to change the rules in that behalf does not appear to be valid ground for contending that the Government had acted mala fide. Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable."

11. In paragraph 9, it was observed that "we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointment from the panel or select list, vide letter dated 27-5-1993, could not be condemned as arbitrary, irrational and/or mala fide."

12. The same ratio was reiterated in **Union of India v. K.V. Vijesh** [(1996) 3 SCC 139] (SCC paras 5 and 7). Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H.S. Gururaja Rao, contends, that this Court in **Y.V. Rangaiah v. J. Sreenivasa Rao** had held that the existing vacancies were required to be filled up as per law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who are eligible prior to the date of appointment. It is seen that the case related to the amendment of the Rules prior to the amendment of the Rules. Two sources were available for appointment as sub-Registrar, namely, UDCs and LDCS. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the

prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in **Rangaiah's** case would apply to the facts of this case? The Government therein merely amended the Rules, applied amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr. H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are **P. Ganeshwar Rao v. State of A.P., P. Mahendranath v. State of Karnataka, A.A. Calton v. Director of Education, N.T. Devin Katti v. Karnataka Public Service Commission**, **Ramesh Kumar Choudha v. State of M.P.** In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules."

In **Rajasthan Public Service Commission v. Channan Ram**[8], the two Judges Bench of the Supreme Court interpreted the provisions of the Rajasthan State Agricultural Marketing Service Rules, 1986, distinguished the judgment of **Y.V. Rangaiah**'s case (supra) and held:

"A conjoint reading of these two amending notifications with the erstwhile Schedule entries and Rule 4 of the Rules leaves no room for doubt that after these amendments to the statutory rules erstwhile posts of Assistant Directors (Senior) as earlier found at serial No. 3 ceased to exist and in their place became the posts of Assistant Directors simpliciter. The said posts after the amendment had to be filled in by 100% promotion from the incumbents holding newly created posts of Marketing Officers which substituted the earlier existing posts of Assistant Directors (Junior). So far as the erstwhile posts of Assistant Directors (Junior)/Secretary Market Committee were concerned, serial No. 4 dealing with the said erstwhile posts underwent a metamorphosis and the said posts got substituted by the newly created posts of Marketing Officers who could be recruited now by 50% promotion and 50% by direct recruitment. For 50% direct recruitment to the newly created posts of Marketing Officers, the eligibility qualifications were also changed and while retaining the earlier qualifications one additional qualification was also brought within the sweep of the Rules, namely, M.Sc. (Agriculture) with specialisation in Agriculture Economics/ Agriculture marketing of a University established by law in

India. In the light of the aforesaid amendments to the Service Rules, therefore, the following result ensued:

1. After April 1995 the erstwhile posts of Assistant Directors (Junior) ceased to exist and a new cadre of Marketing Officers came into existence.

2. In directly recruiting incumbents for the newly created posts of Marketing Officers under the Service Rules the educational qualifications also underwent a sea-change and M.Sc. Agriculture with specialisation in Agriculture Economics became the prime qualification for being eligible to be considered for the said posts. Thus under the erstwhile rules for being considered for direct recruitment to the posts of Assistant Directors (Junior) second class Bachelor's Degree was sufficient for the candidate. Now a Master's Degree in Agriculture with specialisation in Agriculture Economics was introduced as a prime educational qualification for the concerned candidate and only second class degree at Graduation level was retained as an alternative eligibility criterion. It is true that the pay scale remained the same. But the erstwhile posts of Assistant Directors (Junior) no longer existed under the Rules after April 1995 and the said erstwhile posts got substituted by creation of new posts of Marketing Officers and these newly created posts of Marketing Officers became the source and feeder posts for cent per cent promotion therefrom to the newly created posts of Assistant Directors. Thus the erstwhile hierarchy in the cadres comprising of Assistant Director (Junior) and Assistant Director (Senior) were given a go-by and instead a new hierarchy in the cadres was constituted, namely, Marketing Officer and Assistant Director. In other words the posts of Assistant Director (Senior) and Assistant Director (Junior) were totally abolished.

Under these circumstances therefore, it is difficult to appreciate how the Division Bench of the High Court could persuade itself in agreeing with the submission of the learned counsel for the respondent writ petitioner that despite this change of cadres and the provision for recruitment on new posts the old advertisement of 5-11-1993 Annexure P-1 seeking to consider the candidature of applicants for erstwhile 23 advertised vacancies in the posts of Assistant Directors (Junior) in the Agricultural Marketing Service of the State of Rajasthan would still be pursued further and recruitment should be effected for these 23 erstwhile vacancies as per the old advertisement. It is easy to visualise that even if such an earlier advertisement of 5-11-1993 was proceeded with further it would have resulted into a stalemate and an exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Directors (Junior) after 1995 amendment of rules as there were no such posts in the hierarchy of State Service. Consequently it must be held that on account of the amendments to the Rajasthan Agricultural Marketing

Service Rules the earlier advertisement dated 5-11-1993 had become infructuous and otios. Only on this short ground the writ petition of the respondent writ petitioner should have been dismissed by confirming the order of dismissal of the writ petition earlier passed by the learned single Judge. A conjoint reading of Rules 4, 6 and 17 to which we have made a reference earlier leaves no room for doubt that direct recruitment can be resorted to by the Public Service Commission only for existing posts in the Service and for which effective exercise of recruitment could be resorted to at a given point of time. It is true that when the earlier advertisement dated 5-11-1993 Annexure P-1 was issued by the Public Service Commission there were 23 vacancies in the cadre of Assistant Directors (Junior) but by passage of time due to the metamorphosis in the said cadre as a result of amendments to the relevant Service Rules, by the time fresh advertisement was issued on 8-1-1996 there were no posts of Assistant Directors (Junior) in the hierarchy of posts in the cadres governed by the Rules and, therefore, the fresh advertisement dated 8-1-1996 as per Rule 17 had necessarily to refer to the process of direct recruitment to the newly created posts of Marketing Officers and no fault could be found with the said fresh advertisement. This aspect of the matter was highlighted by the Public Service Commission itself by filing counter in the writ petition in the appellate proceedings before the Division Bench of the High Court. A copy of the said counter is found at page 66 of the Paper Book in appeal arising out of S.L.P. (C) No. 9698 of 1997, moved by the Rajasthan Public Service Commission, before us. Paragraphs 7 and 8 of the said counter require to be noted in this connection:

> "7. That in reply to para No. 7 of the writ petition, it is submitted that after the withdrawal of requisition, the cadre structure given in the Rules was revised and the post of Assistant Director (Junior) was redesignated and the post of Marketing Officer was included in the cadre structure for which new qualifications were prescribed. After revision in the cadre structure and amendment in the Rules, a fresh requisition was received by the Commission from the State Government on the basis of which an advertisement was issued by the respondent Commission on 8th January, 1996 and the last date for submission of the application form in response to the said advertisement was 7th March, 1996.
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> 8. That the averments made in para 8 of the writ petition are wholly misconceived. The post of Marketing Officer came into existence after the revision in the cadre structure. No post of Marketing Officer was available under the earlier unamended rules. In these circumstances the contention of the petitioner that the post of Marketing Officer was available from the year 1986-87 to 1992-93 is wholly incorrect. The further contention of the petitioner that the posts

are governed by the unamended Rules of 1986 and, therefore, the State Government has no power to fill up the vacancies in terms of the amended Rules is wholly untenable. It is well settled law that amended Rules have to be taken into consideration before the posts have been advertised. If on the date of advertisement the Rules have been amended the posts are to be filled up according to the Rules prevailing on the date of advertisement and the same are not to be filled up according to the unamended Rules."

Despite this clear case made out by the Rajasthan Public Service Commission before the Division Bench of the High Court and despite the fact that the said case was clearly borne out from the statutory rules as amended in April 1995 the High Court in the impugned judgment has taken the view that the posts of Assistant Directors (Junior) appear to have been re-designated as Marketing Officers meaning thereby there was only change of nomenclature. It is difficult to appreciate this line of reasoning. Not only the posts of Assistant Directors (Junior) got abolished and substituted by new posts of Marketing Officers but it is the new post of Marketing Officer which became the feeder post for 100% promotion from the said newly created post to the post of Assistant Director which also was a newly created post in the place of the erstwhile post of Assistant Director (Senior). It must, therefore, be held that the earlier advertisement of 5-11-1993 Annexure P-1 became infructuous and could not be relied upon for sustaining any further process of recruitment pursuant to the said infructuous advertisement seeking to recruit persons to posts which no longer existed in Rajasthan State Marketing Service after April 1995. The first point, therefore, will have to be answered in the affirmative in favour of the appellants and against the respondent writ petitioner."

In **Shyama Charan Dash v. State of Orissa**[9], the Supreme Court considered a question similar to the one raised in this appeal and held that the decision of the State to enlarge the zone of consideration cannot be nullified on the ground that it would adversely affect the appellant's chance of consideration. While dealing with the judgment of **Y.V. Rangaiah**'s case (supra), the Supreme Court observed:

"It is appropriate at this stage to make reference to some of the decisions relied upon by the learned counsel on either side. **Y. V. Rangaiah v. J. Sreenivasa Rao** being a case where not only there was omission to prepare the promotion panel in time as per rules then in force but the

amended rules dispensed with the original provision for considering LDCs along with UDCs for promotion, adversely affecting their promotional prospects, has no application to the case on hand. The decision in **R. S. Ajara v. State of Gujarat** [(1997) 3 SCC 641] lays down that the benefit that has accrued or crystallized under the existing rules cannot be taken away by an amendment with retrospective effect. In **Chairman, Railway Board and others v. C. R. Rangadhamaiah** [(1997) 6 SCC 623], a Constitution Bench of this Court held that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution of India, but a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 to the extent it operates retrospectively. This observation came to be made in the context of a challenge to the notification, which, by the language employed therein, applied to the detriment of the pensionary rights of those who had already retired and no longer in service and deprived the retired persons of their entitlement to be reckoned as on the date of retirement, when they acquired a right to a particular pension, as per rules in force on the date of their retirement. **State of Rajasthan v. R. Dayal** [(1997) 10 SCC 419] is a case wherein this Court held that the mere fact that a person was empanelled for promotion does not entitle him for valid appointment if by the time the vacancies for his appointment actually arose, the eligibility criteria was altered by the amendment to the rules. Emphasizing the position that the preparation of the panel alone does not freeze the criteria to be satisfied in respect of the subsequent vacancies arising thereafter, so as to dispense with the need to satisfy the requirements of rules, which came into force thereafter by way of amendment. Those observations cannot be drawn out of their context to be extended to the case on hand which should be guided by the fact that the amendments in this case never had any effect of rendering ineligible an already eligible person. A mere enlargement of the area or zone of consideration by enabling some more category of posts also to be considered for promotion. If at all could be claimed to have merely affected chances of promotion only and not either right to be considered for promotion or deprive any vested or accrued rights, in law. In **S. B. Mathur v. Chief Justice of Delhi High Court** [(1989) Supp. (1) SCC 34], this Court held that an eligibility criterion is distinct from the zone of consideration. In **State of Maharashtra v. Chandrakant Anant Kulkarni** [(1981) 4 SCC 130] this Court observed that mere chances of promotion are not conditions of service, and the fact that there was reduction in the changes of promotion did not tantamount to a change in the conditions of service while reiterating the settled principle that a right to be considered for promotion is a term of service, but mere reduction in chances of promotion

are not.

The grievance sought to be made as to the equation of posts for purposes of further avenues of promotion or the right and powers of the State to do so also, does not merit our acceptance, in the peculiar facts and circumstances of the case as well, besides the relevant principles of law governing the same. This Court in **S. B. Mathur**'s case observed as follows:-

> "11. The first submission of Mr. Thakur, learned counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualification required for appointments to these posts. He also pointed out that the duties of the incumbents of these posts were different. It was submitted by him that in treating these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotion or transfer of employees Inter se will necessarily arise for the purpose of maintaining the efficiency of the organization. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay scales or substantially lower responsibilities and duties or enjoying much lower status in service."

By applying the ratio of the afore-noted judgments to the facts of this case, we hold that the learned Single Judge did not commit any error by declining the appellant's prayer for quashing the policy contained in letter dated 2-5-1998 and the appeal is liable to be dismissed. Ordered accordingly.

G.S. SINGHVI, C.J.

25th October, 2007

G. ROHINI, J.

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[1] (1983) 3 SCC 284
[2] (1997) 3 SCC 59
[3] 1998 Supp SCC 740
[4] (1990) 1 SCC 411
[5] (1983) 3 SCC 33
[6] (1990) 3 SCC 157
[7] (1996) 11 SCC 242
[8] (1998) 4 SCC 202
[9] (2003) 4 SCC 218